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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,299	12/08/2005	Robert Puskeiler	SPM-390-A	8286

7590 03/02/2010
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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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03/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,299	Applicant(s) PUSKEILER ET AL.	
	Examiner Charles E. Cooley	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-20,31-34 and 47-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-30 and 35-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-54 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20050621</u> . | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION

1. **This application has been assigned to Technology Center 1700, Art Unit 1797 and the following will apply for this application:**

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1797**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Election/Restriction Requirement

2. Applicant's election without traverse of Group II (agitation system) in the reply filed on 4 NOV 2009 is acknowledged.
3. Claims 1-20, 31-34, and 47-54 are thereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4 NOV 2009.
4. Although Applicant elected claims 30 and 35-46 of Group II, these claims are also constructively withdrawn from further consideration pursuant to 37 CFR 1.142(b) and MPEP 821. Note Applicant's election is based upon an erroneous claim grouping by the previous examiner. The current examiner believes that claims 30 and 35-46 should have been grouped with Group I since claim 30 depends from claim 1 (not

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elected independent claim 21), claim 30 essentially repeats the subject matter of elected claim 21 drawn to the agitation system, the preamble of claims 35-46 refer to an “arrangement” rather than the elected “agitation system”, and claims 35-46 are replete with terms that lack antecedent basis (assuming claim 30 and claims 35-46 were to depend from claim 21) as noted below. Accordingly, claims 21-29 drawn to the elected agitation system will be treated on the merits and claims 30 and 35-46 will be rejected under 35 USC 112, second paragraph as not properly depending from an elected invention.

5. Since the claim groupings in the restriction requirement are erroneous, the examiner reserves the right to require a revised restriction requirement at a later time if the prosecution warrants such action since the current examiner prosecutes the agitation system subject matter but not the non-elected subject matter. See MPEP 811 and 37 CFR 1.142(a).

Priority

6. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Information Disclosure Statement

7. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 21 JUN 2005.

Oath/Declaration

8. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration filed 8 DEC 2005 in the first inventor section. See 37 CFR 1.52(c).

Drawings

9. The drawings filed 21 JUN 2005 are objected to because of the following informalities:

- a. the figures contain non-English words.
- b. sheet number 9 has an incomplete figure legend "Fig".
- c. many views are not numbered separately in consecutive Arabic numerals in the order in which they appear on the drawing sheets (37 CFR 1.84(u)). For example, Fig. 2 should be labeled --Fig. 2a--, --Fig. 2b--, Fig, 2c-- and --Fig. 2d--.
- d. the drawings contain improper sectional views. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight (37 CFR 1.84(h)(3)).

For example, Figure 4a should be a sectional view taken along line 4a-4a in Figure 4b (not sectional line A-A). All sectional views should be corrected in accordance with 37 CFR 1.84(h)(3).

e. for the reasons on the PTO-948 form, reproduced below.

Applicant should also ensure a proper one-to-one correspondence between the specification and drawings in accordance with MPEP 608.01(g) and 37 CFR 1.84(f). The brief description of the drawings and the descriptive portion of the specification require revision in accordance with the above drawing objections.

Correction is required.

10. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may

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be amended. The figure or figure number of the amended drawing(s) must not be labeled as “amended.” If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor’s name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as “Annotated Marked-up Drawings” and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the “Notice of Allowability.” Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Form PTO-948 (Rev. 06/03) 10/540,299
Application No.

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 21 JUN 2005 are:

- A. approved by the Draftsperson under 37 CFR 1.84 or 1.152.
B. ☒ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. Corrected drawings are required.

1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink or Color (3 sets required).

Color drawings are not acceptable until petition is granted. Fig(s)

Pencil and non black ink not permitted. Fig(s)

2. PHOTOGRAPHS. 37 CFR 1.84(b)

One (1) full-tone set is required. Fig(s)

Photographs may not be mounted. 37 CFR 1.84(e)

Photographs must meet paper size requirements of 37 CFR 1.84(f). Fig(s)

Poor quality (half-tone). Fig(s)

3. TYPE OF PAPER. 37 CFR 1.84(c)

Paper not flexible, strong, white, and durable.

Fig(s)

☒ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted.

Fig(s) 1-30

4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:

21.6 cm by 29.7 cm (DIN size A4) or

21.6 cm by 27.9 cm (8 1/2 x 11 inches)

All drawing sheets not the same size.

Sheet(s)

Drawings sheets not an acceptable size. Fig(s)

5. MARGINS. 37 CFR 1.84(g): Acceptable margins:

Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm

Margins not acceptable. Fig(s)

Top (T) Left (L)

Right (R) Bottom (B)

6. VIEWS. 37 CFR 1.84(h)

REMINDER: Specification may require revision to correspond to drawing changes, e.g., if Fig. 1 is changed to Fig. 1A, Fig. 1B and Fig. 1C, etc., the specification, at the Brief Description of the Drawings, must likewise be changed.

☒ Views not labeled separately or properly.

Fig(s) 12-14, 24-27

7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)

☒ Sectional designation should be noted with Arabic or Roman numbers. Fig(s) 3-14, 24-26

8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)

Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s)

9. SCALE. 37 CFR 1.84(k)

Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction.

Fig(s)

10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(j)

☒ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s) 1-30

11. SHADING. 37 CFR 1.84(m)

Solid black areas pale. Fig(s)

☒ Solid black shading not permitted. Fig(s) 1-5, 16-22

12. NUMBERS, LETTERS, & REFERENCE CHARACTERS. 37 CFR 1.84(p)

☒ Numbers and reference characters not plain and legible. Fig(s) 1-30

☒ Figure legends are poor. Fig(s) 1-30

Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s)

English alphabet not used. 37 CFR 1.84(p)(2)

Fig(s)

Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3). Fig(s)

13. LEAD LINES. 37 CFR 1.84(q)

Lead lines missing. Fig(s)

14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(i)

Sheets not numbered consecutively, and in Arabic numbers beginning with number 1. Sheet(s)

15. NUMBERING OF VIEWS. 37 CFR 1.84(u)

Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s)

16. DESIGN DRAWINGS. 37 CFR 1.152

Surface shading shown not appropriate.

Fig(s)

Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Fig(s)

COMMENTS:

Date 26 FEB 2010

Attachment to Paper No. 20100226

Specification

11. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

12. The disclosure is objected to because of the following informalities:

- a. Page 24, line 13: replace "a" with --a--.

Appropriate correction is required.

13. The Abstract of the Disclosure is objected to because:

- a. the inclusion of legal phraseology such as "means" and "said" in the abstract is improper.

- b. it lacks substance as it is not an adequate and clear statement of the contents of the disclosure. A reading of the abstract does not provide the character of the subject matter covered by the disclosure. The abstract should be more comprehensive of the disclosed subject matter.

Correction is required. See MPEP § 608.01(b).

14. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01). The title should be revised to be commensurate with the elected invention.

Claim Rejections - 35 U.S.C. § 112, second paragraph

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 29-30 and 35-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29: "the rotational direction" lacks antecedent basis.

Assuming claim 30 was to depend from elected claim 21, claim 30 depends from a nonelected claim (claim 1) and repeats the subject matter found in elected claim 21. Furthermore, claims 35-46 are replete with terms that lack antecedent basis such as "the containers", "the arrangement", "the block", "the cover", "the sterile gas supply", "the channels", etc.

Claim Rejections - 35 USC § 102

17. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

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The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

19. Claims 21-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by GB 2076677 A.

Note the recited agitation system/basic body with the claimed channels and borings in Figures 1-5b.

20. Claims 21-24 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by SU 1181699 A.

Note the recited agitation system/basic body with the claimed channels and borings in Figures 1, 2, and 4.

21. Claims 21-24 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by SU 606610.

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Note the recited agitation system/basic body with the claimed channels and borings in Figures 1-2.

22. Claims 21-24 and 26-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Vogtle et al. (US 3,514,214).

Note the recited agitation system/basic body with the claimed channels and borings in Figures 1-14.

23. Claims 21-25, and 27-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schoenman et al. (US 3,881,701).

Note the recited agitation system/basic body with the claimed channels and borings in Figures 1-6.

24. Claims 21-27 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dourdeville et al. (US 4,534,659).

Note the recited agitation system/basic body with the claimed channels and borings in Figures 2-3.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses magnetic stirrers and the broadly claimed agitation bodies with channels/borings therein.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1797 whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley
Primary Examiner
Art Unit 1797

1 March 2010